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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

GARY PIERCE - CHAIRMAN  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL  
2012 OCT 19 PM 3 51

THOMAS PATZKE,

Complainant,

vs.

TUCSON ELECTRIC POWER COMPANY,

Respondent

DOCKET NO. E-01933A-12-0416

**TUCSON ELECTRIC POWER  
COMPANY'S ANSWER TO  
FORMAL COMPLAINT**

**AND**

**MOTION TO DISMISS**

Pursuant to Arizona Administrative Code ("A.A.C.") R14-3-106(H), Tucson Electric Power Company ("TEP" or "Company"), through undersigned counsel, answers the Complaint filed by Thomas Patzke ("Complainant") docketed on September 24, 2012. Further, TEP respectfully requests that the Arizona Corporation Commission ("Commission") dismiss Complainant's Complaint for the reasons explained below.

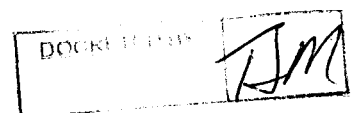
**ANSWER**

1. TEP admits the Company entered into a 2011 Renewable Energy Credit Purchase Agreement ("Purchase Agreement") with the Complainant on July 20, 2011. Additionally, TEP admits that Purchase Agreement Section 6.2 Customer System UFI states: Company shall pay Customer an upfront incentive ("UFI") for the Customer system in the amount of \$2.00 per DC Watt of installed on-grid residential solar generating capacity as determined by the Company during the Customer System Acceptance Test, as prorated by any de-rating for off-angle and shading using the applicable chart in the Program (*see* Exhibit 1).

Arizona Corporation Commission

**DOCKETED**

OCT 19 2012



1           2.       TEP admits the 2011 Renewable Energy Credit Purchase Program ("RECPP") as  
2 approved by the Commission in Decision No. 72033 (December 10, 2010) provides that a UFI  
3 may not exceed 50 percent of Total System Cost (*see* Exhibit 2, page 14). In fact, Decision No.  
4 72033 specifically orders that "the maximum percentage of a project that can be paid for with  
5 utility incentives is 50 percent. (Decision 72033, page 19, lines 14 – 15).

6           3.       TEP admits that Technicians for Sustainability ("TFS") was the Complainant's  
7 approved installer.

8           4.       TEP admits that Mr. Patzke signed an Assignment of Payment on July 21, 2011,  
9 which assigned the Complainant's right to receive any incentive payment ("incentive") from  
10 TEP for the cost and/or installation of his photovoltaic system under the Purchase Agreement to  
11 TFS (*see* Exhibit 3).

12           5.       TEP denies that it accepted the \$36,800 as part of any August 31, 2011  
13 correspondence and denies that it stipulated to that incentive without further review and final  
14 approval. TEP only admits that it issued a reservation letter on August 31, 2011, stating that  
15 funds based on a system size of 18,330 watts at \$2.00 per watt had been reserved pending final  
16 approval (*see* Exhibit 4).

17           6.       TEP admits that TFS submitted a Certificate of Completion ("COC") on  
18 December 23, 2011 (*see* Exhibit 5). The December 23, 2011 COC stated that the total system  
19 size is 18.72 kW and the total system cost was \$63,040.

20           7.       TEP admits that TFS submitted a corrected COC on December 29, 2011 (the  
21 second COC), after a discrepancy was found between the reserved total system size of 18,330  
22 watts (18.33kW) from the Purchase Agreement and the system size referenced on the COC (*see*  
23 Exhibit 6, also dated December 23, 2011). The second COC stated that that the total system size  
24 is 18.4 kW and the total system cost was \$63,040.

25           8.       TEP admits that TFS submitted a revised version of the corrected COC on  
26 January 3, 2012 (the third COC) which included additional costs incurred by the Complainant  
27

1 that TFS states they were not aware of when they had filed the previous two COCs (*see* Exhibit  
2 7; also dated December 23, 2011). The third COC submitted January 3, 2012 stated that the total  
3 system size is 18.4 kW and the total system cost was \$65,088.

4 9. TEP admits that the Purchase Agreement and the RECPP dictate the amount of  
5 the UFI. The Purchase Agreement and the RECPP state that TEP will provide an incentive  
6 payment of \$2.00 per watt but the UFI may not exceed 50 percent of the total system cost.  
7 Based on the third COC, TEP paid the appropriate incentive of \$32,544, which is 50 percent of  
8 the total installed cost for Complainant's system in accordance with the Commission's Decision.

9 10. TEP admits that it authorized and processed an incentive payment of \$32,544 to  
10 be paid to TFS, in accordance with the Assignment of Payment signed by Complainant, on  
11 January 3, 2012.

12 11. TEP admits that an incentive payment check was issued to TFS on January 9,  
13 2012, in accordance with the Assignment of Payment.

14 12. TEP denies that it pushed TFS to meet year end deadlines. TEP is without  
15 sufficient knowledge or information as to whether TFS felt any "rush to comply" and therefore  
16 denies same.

17 13. TEP admits that TFS contacted TEP again on January 5, 2012 concerning the total  
18 cost of the system, after allegedly being prompted by the Complainant. TEP again stated the  
19 incentive payment had already been paid based on the total cost submitted on the third COC  
20 submitted January 3, 2012.

21 14. TEP admits that then TFS submitted yet another COC on January 24, 2012 (the  
22 fourth COC) which allegedly included the Complainant's claimed expenses not provided by TFS  
23 (the approved installer) in any of the previous COCs, nor was there any additional  
24 documentation submitted at this time to substantiate the claimed expenses (*see* Exhibit 8, also  
25 dated December 23, 2011). The fourth COC submitted over 30 days after the original first COC  
26 stated that the total system size is 18.4 kW and the total system cost was now \$73,381.

1           15.     TEP admits on February 27, 2012 it issued an UFI check payable to Complainant  
2 for \$32,544. This check was only issued to Complainant after a mutual agreement was reached  
3 between TEP, Complainant and TFS, despite the Assignment of Payment, an extremely rare  
4 situation. TEP denies that it has handled incentive payments for Complainant's system in an  
5 inconsistent manner. The check to Complainant was cashed on March 2, 2012.

6           16.     TEP denies that Complainant submitted an additional COC on February 15, 2012.  
7 TEP only admits that Ms. Blanka Anderson, Program Coordinator for the Renewable Energy  
8 Credit Purchase Program, attempted to work with Complainant to resolve the discrepancy  
9 between the costs filed with the third COC and the alleged costs additionally claimed by the  
10 Complainant included as part of the fourth COC.

11           17.     TEP denies that the Complainant submitted an outline of expenses that identified  
12 payment details. On February 15, 2012 the Complainant submitted an email with an informal  
13 spreadsheet listing the final amounts charged for certain services.

14           18.     TEP admits that the informal spreadsheet contains the names of Mr. Patzke's two  
15 sons and the amount he paid them for labor. The Complainant claims a total of \$4,625 for labor  
16 expenses supposedly attributable to his son and a family friend. No supporting documentation  
17 was attached substantiating the labor claims. The Complainant is not a licensed contractor, as  
18 required by the Commission approved RECCP, and therefore there are no employment records to  
19 validate this expense. (*see* Exhibit 2, page 16)

20           19.     TEP admits that gravel is listed on the informal spreadsheet, but denies that  
21 \$1,213 of decorative rock is a necessary part of the total system cost for purposes of paying  
22 incentives under the approved RECCP.

23           20.     TEP admits that the Complainant on February 15, 2012 disclosed a credit from an  
24 alleged settlement with in the amount of \$8,035. TEP is without sufficient information  
25 concerning any details involving the dispute between Complainant and TFS, and therefore denies  
26 same.

1           21.     TEP admits that the Complainant's February 15, 2012 email describes the  
2 calculation Complainant used to compute his total system cost: TFS's original COC cost of  
3 \$65,088 plus the Complainant's additional personal costs of \$16,238 minus the credit from the  
4 TFS settlement of \$8,035 for a total system cost of \$73,381.

5           22.     TEP admits that on March 30, 2012, Mr. Carmine Tilghman, Director of  
6 Renewable Resources and Programs, sent the Complainant and TFS an email stating that he was  
7 authorizing the issuance of a check for \$4,256 payable to TFS, per the Assignment of Payment.

8           23.     TEP admits that the Company sent a letter to Mr. Patzke dated April 9, 2012,  
9 stating that because his system has met specific specifications, TEP is granting permission to  
10 operate the PV generating system in parallel with TEP's electric distribution system (*see* Exhibit  
11 9).

12           24.     TEP admits that it received an email on April 27, 2012 from TFS that states TFS  
13 is forwarding the \$4,256 UFI check to the Complainant. TEP further admits that Mr. Tilghman  
14 responded on April 27, 2012 to TFS and the Complainant, requesting TFS not disperse the check  
15 until the Complainant provides actual receipts for work performed. TEP denies the remainder of  
16 Complainant's allegations or characterizations regarding communications that occurred on or  
17 subsequent to April 27, 2012.

18           25.     TEP denies that it raised any new issue regarding missing receipts in Mr.  
19 Tilghman's April 27, 2012 email. TEP had requested from the Complainant an outline of the  
20 nearly \$10,000 difference in total system cost in Ms. Anderson's February 15, 2012 email.  
21 Further, Ms. Anderson confirmed that additional invoices were necessary from Complainant.  
22 Complainant submitted no such invoices.

23           26.     TEP admits that TFS did return the incentive check of \$4,526 to TEP.

24           27.     TEP admits that on May 23, 2012, it submitted correspondence to Complainant  
25 indicating that TFS was not entitled to the additional \$4,256 previously disbursed, in part,  
26 because the necessary requirements under TEP's 2011 RECPP were not met. (*see* Exhibit 10)

1           28.   TEP admits that the Complainant filed an informal complaint with the  
2 Commission on August 28, 2012. TEP responded to the informal complaint on September 4,  
3 2012. A mediation involving Richard Martinez, Thomas Patzke, Larry Lucero, and Carmine  
4 Tilghman was held on September 14, 2012.

5           29.   TEP denies that it has breached the Purchase Agreement with the Complainant.

6           30.   TEP denies that it has acted in bad faith in processing the Complainant's UFI.

7           31.   TEP denies each and every allegation not specifically admitted.

8                                   **AFFIRMATIVE DEFENSES**

9           32.   Complainant has failed to state a claim upon which relief may be granted.  
10 Complainant has alleged no "violation of any provision of law or any order or rule of the  
11 commission" as required by Arizona Revised Statute §40-246(A). TEP has acted and continues  
12 to act in accordance with all Commission Rules, Regulations and Orders, including Decision No.  
13 72033.

14           33.   Complainant failed to comply with the necessary requirements under TEP's 2011  
15 RECPP, as approved in Decision No. 72033 – including having work done by a qualified  
16 installer or contractor, submitting a valid AZROC contractor's license for the work performed by  
17 Complainant not completed by TFS, submitting a formal waiver of the contractor's license  
18 requirement.

19           34.   Complainant's choice of venue with the Arizona Corporation Commission is  
20 improper.

21           35.   The Commission lacks subject matter jurisdiction over Mr. Patzke's claim that  
22 TEP is in breach of contract.

23           36.   TEP does not know at this time which, if any, additional defenses may apply.  
24 TEP believes that facts may come to light in this case that support any or all of the affirmative  
25 defenses set forth in Rule 8(c), Arizona Rules of Civil Procedure, and hereby incorporates them  
26 by reference.  
27

1 **MOTION TO DISMISS**

2 Mr. Patzke's Complaint should be dismissed because it is deficient, raises issues outside  
3 the scope of the Commission's jurisdiction, and is in the improper venue. Arizona Revised  
4 Statute §40-246(A) requires that Mr. Patzke allege a "violation of any provision of law or any  
5 order or rule of the commission" in order to file a formal complaint. While the Commission "has  
6 broad powers with respect to those matters that fall within its constitutionally or legislatively  
7 endowed authority," claims "that are unrelated to or attenuated from those matters over which  
8 the Commission has express constitutional or statutory authority do not fall within the  
9 Commission's exclusive jurisdiction." *Qwest Corp. v. Kelly*, 204 Ariz. 25 at 30, 59 P. 3d 789 at  
10 794 (Ariz. App. Div. 2, 2002). Where a complaint raises "relatively simple tort and contract  
11 issues revolving around a central inquiry: whether, under traditional judicial principles, [the  
12 company] committed a civil wrong against [the complainant]," then the "claims most important  
13 aspects involve facts and theories of tort and contract far afield of the Commission's area of  
14 expertise and statutory responsibility." *Id.* at 32, 796 (internal quotations omitted). Indeed, "tort  
15 and contract claims are the type of traditional claims with which our trial courts of general  
16 jurisdiction are most familiar and capable of dealing." *Id.* The Complainant has failed to allege  
17 a single violation involving Commission rules, decisions, or provisions of law under Title 40. In  
18 fact, the only violations cited deal with breach of contract and/or acting in bad faith.

19 Additionally, the Complainants choice of venue is improper. Section 15.3 of the  
20 Purchase Agreement expressly states the following:

21 "Governing Law and Venue. This Agreement shall be governed by the laws of the  
22 State of Arizona, without regard to the choice of law provisions thereof. Venue for  
23 any dispute arising hereunder shall be any court of competent jurisdiction located  
in Pima County, Arizona." (emphasis added.)

24 Complainant voluntarily agreed to this provision in the July 20, 2011 Purchase Agreement. The  
25 appropriate venue to resolve this contract dispute is in Pima County Court. Because nothing the  
26 Complainant has alleged is within this Commission's jurisdiction, the Complaint is procedurally  
27

1 deficient, and the choice of venue is improper, this matter should be dismissed and all relief  
2 requested denied.

3 Further, this matter implicates a dispute between TFS and Complainant. According to  
4 documentation submitted to TEP, Complainant had signed an Assignment of Payment with TFS;  
5 TEP was legally obligated to pay TFS, not Complainant. Any dispute Complainant has  
6 regarding the total amount of the UFI should be resolved with TFS, not TEP. TEP believes that  
7 TFS is an indispensable party to the action because complete relief cannot be obtained absent  
8 TFS's joinder in the proceeding. Since the Commission has no jurisdiction over TFS, it cannot  
9 mandate joinder into this action. This is another reason why venue properly lies with the Pima  
10 County Superior Court. For that reason, the Commission can and should dismiss the Complaint,  
11 if not already dismissed for the other reasons stated previously.

12 WHEREFORE, having fully answered Mr. Patzke's Complaint, TEP requests that the  
13 Commission issue a Decision dismissing the Complaint; and

14 1. Denying all relief sought by Complainant, including any request that Complainant  
15 be compensated; and

16 2. Granting such further relief as this Commission deems just and reasonable.

17 3. If the Commission decides not to summarily act on the Company's Motion to  
18 Dismiss, TEP respectfully requests an oral argument on its Motion to Dismiss.

19 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of October 2012.

20 TUCSON ELECTRIC POWER COMPANY

21  
22  
23 By 

24 Jason D. Gellman  
25 Koshka, DeWulf & Patten, PLC  
26 400 East Van Buren Street, Suite 800  
27 Phoenix, Arizona 85004  
Attorney for Tucson Electric Power Company



1 Original and 13 copies of the foregoing  
2 filed this 19<sup>th</sup> day of October 2012 to:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed  
8 this 19<sup>th</sup> day of October 2012 to:

9 Lyn Farmer  
10 Hearing Division  
11 Arizona Corporation Commission  
12 400 West Congress Suite # 221  
13 Tucson, AZ 85701-1347

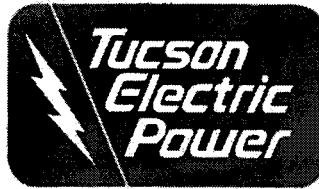
14 Steven M. Olea, Director  
15 Utilities Division  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

19 Janice Alward, Chief Counsel  
20 Legal Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 Thomas Patzke  
25 12951 N. Tailwind Drive  
26 Oro Valley, Arizona 85755

27 By *Robbie Amarel*

# EXHIBIT 1



A UniSource Energy Company

## Up Front Incentive Renewable Energy Credit Purchase Agreement (Residential Grid Tied Solar)

This Up Front Incentive Renewable Energy Credit Purchase Agreement ("**Agreement**") is hereby made and entered into as of the 20 day of July, 2011 ("**Effective Date**"), by and between Tucson Electric Power Company, an Arizona corporation ("**Company**"), and Thomas Patzke ("**Customer**"). Company and Customer may be referred to individually herein as a "**Party**" or collectively as the "**Parties**."

### RECITALS

A. Company desires to increase the number of renewable electricity generation facilities and the consumption of renewable electricity within its service territory, while concurrently reducing the cost of renewable electricity generation systems for its customers;

B. Customer intends to install, maintain and own a renewable electricity generation system and have title to the RECs (as defined below) associated with such system;

C. Company is subject to certain state regulatory requirements governing its use of renewable resources to supply energy to its customers, including those provided under the Renewable Energy Standard and Tariff (as defined below);

D. To further Company's continuing commitment to develop and encourage the use of renewable energy resources and to better ensure compliance with regulatory requirements, Company has implemented a REC purchase program to provide financial incentives to its customers to install renewable generating equipment; and

E. Customer desires to participate in Company's REC purchase program and Company desires for Customer to participate in the program under the terms and conditions contained in this Agreement.

### AGREEMENT

#### 1. DEFINITIONS

1.1. "**Acceptance Test**" means an inspection and/or other verification by Company to confirm the Customer System has been installed and operates in conformance with Customer's Program reservation and the System Qualifications.

- 1.2. "**Customer System**" means the <sup>10.40</sup>~~18.33~~ kW output (DC) photovoltaic renewable electricity generation facility located at the Premises.
- 1.3. "**Installation Deadline**" means the date that is one hundred eighty (180) days after the Reservation Confirmation Date.
- 1.4. "**Premises**" means Customer's facilities located at 12951 N Tailwind Dr Tucson, Arizona.
- 1.5. "**Proof of Project Advancement**" means documentation submitted to Company demonstrating that the installation of the Customer System is progressing on schedule, including, without limitation, building and/or construction permits and any other documentation evidencing project advancement as set forth in the Program or required by Company.
- 1.6. "**Program**" means the Tucson Electric Power Company Renewable Energy Credit Purchase Program Definition 2010-2014, as may be amended from time to time.
- 1.7. "**Reservation Confirmation Date**" means the date Customer's Program reservation request is approved by Company under the Program.
- 1.8. "**REC**" means any and all environmental credits, attributes and benefits, including greenhouse gas or emissions reductions and any associated credits, environmental air quality credits, offsets, allowances and benefits howsoever entitled, actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided, credits towards achieving local, national or international renewable portfolio standards, green tags and any and all other green energy or other environmental benefits associated with the generation of renewable energy (regardless of how any present or future law or regulation attributes or allocates such characteristics), including those created under the REST.
- 1.9. "**Renewable Energy Standard and Tariff**" or "**REST**" means the Arizona Renewable Energy Standard and Tariff codified at A.A.C. R14-2-1801 *et seq.*, as may be amended from time to time.
- 1.10. "**System Qualifications**" means all equipment, installation and other general requirements pertaining to residential solar electric systems as set forth in the Program.
- 1.11. "**Term**" shall have the meaning set forth in Section 15.1 below.
- 1.12. "**Up Front Incentive**" or "**UFF**" means a one-time incentive payment based on the Customer System capacity or estimated energy kilowatt-hour ("**kWh**") production, as applicable, rather than on measured system output.

**2. PROGRAM TIMELINE**

Customer agrees to perform its obligations with respect to the Customer System hereunder in an expeditious manner, including, but not limited to, submitting Proof of Project Advancement to Company within sixty (60) days of the Reservation Confirmation Date, ensuring Company is provided with copies of the applicable city/county final inspection paperwork as soon as practicable after installation of the Customer System is complete, and meeting all Program requirements on or before the Installation Deadline. Failure to perform such obligations may result in cancellation of the Customer System Program reservation.

**3. CUSTOMER RENEWABLE ENERGY SYSTEM**

Customer owns the Customer System and will be solely responsible for its cost, operation and maintenance. The Parties acknowledge and agree that, to qualify for participation in the Program, the Customer System must comply with all System Qualifications and Program requirements.

**4. SYSTEM INSTALLATION**

The Customer System must have been installed at the Premises in accordance with the installation requirements set forth in the System Qualifications and the Program, including, without limitation, a proper interconnection with Company's power grid. Customer or its designee shall be solely responsible for the installation of the Customer System, including selecting a qualified installer and paying all installation costs and expenses.

**5. ACCEPTANCE TEST AND INSPECTIONS**

Customer will notify Company when the installation of the Customer System is complete by providing Company with a copy of the applicable city/county final inspection permit associated with the installation. Following its receipt of such notice and permit, Company will perform an Acceptance Test on the Customer System to verify the installation and system performance are in compliance with the System Qualifications. If the Company determines the Customer System is not in compliance with the System Qualifications for any reason, Company will notify Customer of such noncompliance. Company will have no further obligation under this Agreement until all such deficiencies are remedied by Customer to Company's reasonable satisfaction and the Customer System is in compliance with the System Qualifications. Unless otherwise indicated in the Customer System reservation request, Company shall have the right to conduct periodic inspections of the Customer System during the Term upon notice to Customer. Such inspections may include, without limitation, reading the Customer System's solar production meter as necessary to verify compliance with the System Qualifications. Customer shall provide Company with reasonable access to the Customer System to conduct any such inspection.

**6. UP-FRONT INCENTIVE PAYMENT**

6.1. Conditions Precedent. Subject to: (i) Customer's execution and delivery of this Agreement and a properly completed Form W-9 to Company, (ii) Company's receipt of a copy of the applicable city/county final inspection permit, (iii) Company's determination that the Customer System is in compliance with the System Qualifications (including by passing any required Acceptance Test) and (iv) the Customer System being operational by the Installation Deadline, Company shall pay Customer the UFI described in this Section 6.

6.2. Customer System UFI. Company shall pay Customer a UFI for the Customer System in the amount of \$2.00 per DC Watt of installed on-grid residential solar generating capacity, as determined by Company during the Customer System Acceptance Test, as prorated by any de-rating for off-angle and shading using the applicable chart in the Program.

6.3. Payments. Any UFI payment determined by Company to be owed to Customer hereunder shall be paid to Customer within thirty (30) days after the Customer System passes the Acceptance Test described under Section 5 above.

6.4 Payments Constitute Taxable Income. The IRS considers any UFI payment made to Customer to be taxable income to Customer, even if the payment is assigned to a third party. Accordingly, Customer shall deliver to Company a properly completed IRS Form W-9 prior to Company's execution of this Agreement to enable Company to issue an IRS-required Form 1099 for any UFI payment made to Customer.

## **7. OWNERSHIP OF RENEWABLE ENERGY CREDITS**

Customer hereby irrevocably and unconditionally assigns and transfers to Company any and all RECs derived from the installation and use of the Customer System during the Term. Customer shall not sell, trade, assign or otherwise transfer, or permit to be sold, traded, assigned or otherwise transferred, any RECs derived from the installation and use of the Customer System to any party other than Company during such time Company is entitled to receive such RECs hereunder. Upon Company's request, Customer shall provide Company with reasonable documentation evidencing its ownership of such RECs and transfer thereof to Company.

## **8. SYSTEM ELECTRICAL OUTPUT**

The ownership and rights to the electrical output of the Customer System are addressed in a separate agreement hereto.

## **9. CUSTOMER SYSTEM REMOVAL**

Neither the Customer System nor any components thereof may be removed from the Premises during the Term without Company's prior written consent. Any such removal of the Customer System shall constitute a material breach of this Agreement and will subject Customer to the UFI refund obligations set forth in Section 14.5 below.

## **10. CUSTOMER REPRESENTATIONS**

Customer hereby represents and warrants to Company that the following statements are true and correct as of the Effective Date and will be true and correct at the time of any transfer by Customer to Company of any RECs hereunder:

10.1. Customer is the true and lawful owner of, and has good title to, all RECs transferred from Customer to Company hereunder, free and clear of all liens and encumbrances;

10.2. Each REC transferred from Customer to Company hereunder meets the requirements of the REST;

10.3. Neither Customer nor, to Customer's knowledge, any third party has sold, traded, assigned or otherwise transferred any RECs to be transferred from Customer to Company hereunder to any party other than Company;

10.4. Customer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including, without limitation, the transfer of any RECs to Company; and

10.5. Customer is in full compliance with all applicable federal, state and local laws, regulations, ordinances and codes governing the production and/or sale of electricity.

#### **11. WARRANTY**

COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ITS PERFORMANCE HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CUSTOMER SYSTEM, ITS OPERATION, SAFETY, INSTALLATION OR COMPLIANCE WITH ANY BUILDING OR SAFETY CODES, RULES OR REGULATIONS, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY HEREBY DISCLAIMS ANY AND ALL LIABILITY ASSOCIATED THEREWITH.

#### **12. LIMITATION OF LIABILITY**

COMPANY'S ENTIRE LIABILITY ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES STEMMING FROM CLAIMS DIRECTLY ATTRIBUTABLE TO COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN NO EVENT SHALL COMPANY, ITS EMPLOYEES OR AGENTS BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED, RESULTING FROM COMPANY'S PERFORMANCE HEREUNDER.

#### **13. INDEMNIFICATION**

Customer agrees to indemnify, defend and hold harmless Company, its affiliates and parent company, and all their officers, directors, shareholders, employees and agents from and against any and all costs, claims, liability, judgments and expenses of any nature whatsoever, which arise from damage to property or from injury or death which occurs as a result of the purchase, installation or maintenance of the Customer System. Customer's obligation to indemnify hereunder shall survive termination of this Agreement.

#### **14. TERM AND TERMINATION**

14.1. Term. This Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall continue until December 31 of the 20<sup>th</sup> full calendar year after the Customer System passes the Acceptance Test (the "Term").

14.2. Company Termination. Company may terminate this Agreement:

- i. on thirty (30) days written notice to Customer in the event Customer commits a material breach of this Agreement or the Program and fails to cure the same within such thirty (30) day period;
- ii. immediately in the event that Customer: (a) makes an assignment or any general arrangement for the benefit of creditors, (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under the bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days after filing or (c) otherwise becomes bankrupt or insolvent (however evidenced);
- iii. upon (30) days prior written notice to Customer if the Customer System is not in compliance with the System Qualifications (including by passing the Acceptance Test) by the Installation Deadline and Company does not grant an extension; or
- iv. immediately upon written notice to Customer in the event the Customer System Program reservation is cancelled by Company under the Program, including for a failure to meet any project advancement requirements under the Program.

14.3. Force Majeure. Either Party may terminate the Agreement as provided in Section 15.8 below.

14.4. Mutual Agreement. The Agreement may be terminated at any time by mutual written agreement of the Parties.

14.5. Effect of Termination. In the event of Company's termination of the Agreement for Customer's breach under Section 14.2(i) (including as a result of the removal of the Customer System from the Premises in violation of Section 9 above), Section 14.2(ii), 14.3, or if the Parties terminate the Agreement under Section 14.4 above, in addition to any other legal rights and remedies available to Company, Customer shall immediately refund to Company a pro-rata amount of the UFI paid to Customer hereunder corresponding to the number of months remaining in the Term. In the event of Company's termination of this Agreement under Section 14.2(iii) or 14.2(iv) above, neither Party shall have any further obligation to the other hereunder and neither Party shall have any liability to the other stemming from such termination.

## 15. MISCELLANEOUS

15.1. Modification, Waiver and Severability. This Agreement may not be modified or supplemented except by written instrument signed by the Parties. No waiver of any default or breach hereof shall be deemed a waiver of any other default or breach hereof. If any part of this Agreement is finally adjudicated void and/or unenforceable, such part shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.

15.2. Assignment. This Agreement and the rights, duties and obligations hereunder may not be assigned or delegated by the Customer without the prior written consent of Company.



15.3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona, without regard to the choice of law provisions thereof. Venue for any dispute arising hereunder shall be any court of competent jurisdiction located in Pima County, Arizona.

15.4. Entire Agreement. This Agreement is the final integration of the agreement between the Parties with respect to the matters covered by it and supersedes any prior understanding or agreements, oral or written, with respect thereto.

15.5. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

15.6. Titles and Captions. Titles or captions contained in this Agreement are inserted for convenience and for reference only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

15.7. Expenses and Attorney's Fees. In any actions between the Parties to enforce any of the terms of this Agreement, the prevailing Party shall be entitled to recover expenses, including reasonable attorney's fees.

15.8. Force Majeure. Neither Party shall be liable to the other for failure to perform its obligations hereunder to the extent such failure results from causes beyond its reasonable control, including strikes, climatic conditions, acts of God, governmental laws, regulations, orders or requirements, interruptions of power or unavailability of equipment or supplies (each a "**Force Majeure Event**"). Provided, if any Force Majeure Event claimed by a Party continues for an uninterrupted period of more than one hundred and eighty (180) days, then the other Party may, at any time following the end of such period, immediately terminate this Agreement upon written notice to the affected Party, without further obligation to the affected Party, except as to payment of any costs and liabilities incurred before the effective date of such termination.

15.9. Forward Contract. The Parties agree that this Agreement and the transactions contemplated hereunder shall constitute a "forward contract" and that Company is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

15.10. Customer Sale of Premises. In the event Customer sells or otherwise transfers the Premises, Customer's successor-in-interest shall expressly assume all of Customer's obligations hereunder in writing by executing an assignment and Assumption Agreement in the form of Attachment A attached hereto and incorporated herein (the "**Assignment Agreement**"), and this Agreement shall not be affected, nor shall Company's rights hereunder be disturbed in any way, including, without limitation, Company's continued right to all RECs assigned pursuant to Section 7 above. Customer shall provide Company with an executed Assignment Agreement at the time of the sale or transfer of the Premises. Any failure to comply with this Section 15.10 shall be considered a material breach of the Agreement.

15.11. Compliance with Law. Customer shall comply with all applicable federal, state and local laws, regulations, ordinances and codes at all times in performing under this Agreement.

15.12. Survival. After expiration or termination of this Agreement, those provisions which specifically provide for survival beyond expiration or termination, and all provisions regarding warranty and limitation of liability, shall survive indefinitely or until the expiration of the time period specified elsewhere in this Agreement with respect to the provision in question.

15.13. No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

15.14. Taxes. Customer shall pay all local, state and federal taxes, levies, duties and assessments of every nature whatsoever which may be imposed or due in connection with the RECs sold to Company hereunder. Customer shall hold Company harmless from any and all future liability on account of any and all such taxes, levies, duties and assessments.

15.15. Notices. All notices under this Agreement shall be in writing and shall be given by personal service (including receipted confirmed facsimile), or by certified or registered mail, return receipt requested, or by recognized overnight courier service to the Parties at the addresses set forth below. All notices shall be deemed given upon the actual receipt thereof.

**Company:**

**Tucson Electric Power Company**

PO Box 711

Tucson, Arizona 85702

Fax: (520) 918-8350

Attn: Renewable Energy & Energy Efficiency Group

**Customer:**

Thomas Patzke

12951 N Tailwind Dr

Tucson, AZ 85755

Phone: (717) 876-5949

Fax:

**ACCEPTED AND AGREED as of the Effective Date.**

**TUCSON ELECTRIC POWER COMPANY**

By: 

Print Name: \_\_\_\_\_

Title: Director - Renewable  
Energy Resources

**CUSTOMER**

By: Thomas Patzke

Print Name: Thomas Patzke

**ATTACHMENT A**  
**FORM OF**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
*(see attached)*

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "**Assignment**") dated as of \_\_\_\_\_ 20\_\_ ("**Effective Date**"), is made by and between \_\_\_\_\_ ("**Seller**"), \_\_\_\_\_ ("**Buyer**") and Tucson Electric Power Company ("**Company**"). Seller, Buyer and Company may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

### RECITALS

Seller is a party to a Renewable Energy Credit Purchase Agreement with Company dated \_\_\_\_\_, 20\_\_ (the "**REC Agreement**"). The REC Agreement pertains to the Customer System (as defined in the REC Agreement) located at \_\_\_\_\_ (the "**Premises**") that the Seller intends to sell to the Buyer; and

The REC Agreement requires that any purchaser of the Premises assume Seller's obligations under the REC Agreement. Incident to the sale of the Premises by Seller to Buyer, the Parties desire to effect the required assumption by this Assignment.

NOW, THEREFORE, in consideration of these premises and of the mutual promises herein contained, the Parties hereby agree as follows:

### AGREEMENT

1. **ASSIGNMENT.** Incident to the sale of the Premises, Seller hereby assigns and transfers to Buyer the REC Agreement and all of Seller's right, interest, obligations and liabilities thereunder effective upon the sale of the Premises. Buyer hereby accepts the assignment of the REC Agreement from Seller, and assumes all of Seller's obligations and liabilities thereunder effective upon the sale of the Premises. Company hereby consents to such assignment and assumption of the REC Agreement. The Assignment does not affect the REC Agreement or Company's rights thereunder, including, without limitation, Company's continued right to any credits assigned thereunder.

2. **MISCELLANEOUS.** This Assignment may not be modified or supplemented except by written instrument signed by the Parties. This Assignment and the rights, duties and obligations hereunder may not be assigned or delegated by Buyer or Seller without the prior written consent of Company. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

**ACCEPTED AND AGREED** as of the Effective Date.

**BUYER**

**SELLER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**TUCSON ELECTRIC POWER COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT 2

**Exhibit 5**

**Tucson Electric Power Company**

**Renewable Energy Credit Purchase Program**

**(“RECPP”)**

**2011**

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## Solar Electric: Residential Projects 20 kW AC (28.4 kW DC) or Less and Non-Residential Projects 50 kW AC (71 kW DC) or Less

### INCENTIVE LEVELS FOR RESIDENTIAL SOLAR ELECTRIC SYSTEMS AND NON-RESIDENTIAL SYSTEMS 50 kW AC OR LESS

Residential Solar Electric systems and Non-Residential Solar Electric systems 50 kW AC or less are eligible for UFIs. UFIs are those incentives where the customer receives a one-time payment based on the system's designed capacity.

Table 1 identifies the incentives available for Residential Solar Electric systems and Non-Residential Solar Electric systems 50 kW AC or less.

**Table 1. Up-Front Incentives (\$/Watt) for On-Grid Residential Smaller than 20 kW AC, On-Grid Non-Residential 50 kW AC or Less, and Off-Grid Solar Electric Systems**

YEAR	RESIDENTIAL	SMALL NON-RESIDENTIAL	OFF-GRID
2011	\$2.00/W DC	\$1.50	\$2.00

**Notes:**

- On-Grid Residential customers will receive a UFI up to a cap of 20 kW AC (28.4 kW DC). If a residential system is installed larger than 20 kW AC, TEP will only provide an incentive payment for the first 20 kW AC.
- On-Grid Small non-residential customers will receive a UFI up to a cap of 50 kW AC (71 kW DC). If a small non-residential system is installed larger than 50 kW AC, it must apply under the large non-residential program.
- Off-Grid customers, residential or non-residential, will receive a UFI up to a cap of 4 kW AC.
- The UFI may not exceed 50% of Total System Cost.
- The customer must pay at least 15% of the project cost, after other government incentives (e.g., tax credits) are considered. (See explanation of incentive calculation below.)
- Systems may not be eligible to receive RECPP incentives if other utility incentives are applied.
- As described later in this document, these incentive levels may be decreased because of sub-optimal system positioning.

The incentive amount will be calculated at the time the application is approved for reservation. If federal or state incentives change during the period of time after the reservation approval, the incentive amount reserved will not be changed as long as the reservation is not cancelled.

In return for TEP's payment of a UFI, TEP will be given complete and irrevocable ownership of the RECs until December 31<sup>st</sup> of the 20<sup>th</sup> full calendar year after completion of installation of the system. Operational life during that time frame must be supported by system warranty or planned maintenance schedules.

## PROJECT FUNDING

Funds will be made available for reservations on a first-come, first-served basis, until annual funding is fully reserved. Reservations which are rejected as a result of insufficient funds will be placed on a waiting list and offered the opportunity to retain their original reservation date for one additional quarter without the need to resubmit application documentation. If the incentive level has changed from the date of the original reservation to the date when the reservation is approved, the new incentive level shall be applied.

Incentive levels will be reduced using a compliance trigger mechanism. If TEP has reached 60% of its annual REST compliance on or before June 30, 2011, the incentive levels will be reduced based Table 2. If TEP has not reached 60% by June 30, 2011 the incentive levels would not be reduced automatically in 2011. If the trigger is reached, TEP will make public that the incentive levels will be reduced approximately 30 days after the trigger has been achieved. The trigger is a mechanism to protect the industry by helping to ensure that money is still available for the duration of the year.

**Table 2: Decreased Incentives Based on Compliance Trigger for Up-Front Incentives**

YEAR	RESIDENTIAL	SMALL NON-RESIDENTIAL	OFF-GRID
2011	\$1.75/W DC	\$1.25/W DC	\$2.00/W DC

TEP will allocate funds to all qualifying technologies applying for residential and non-residential incentives. Non-PV categories may be protected from over spending in PV at the discretion of TEP Program Managers. This would most likely be a 10% carve out for technologies other than PV for both classes of projects.

## NET METERING

RECPP incentives can be applied to systems designed to serve only the typical load of the customer with whom the incentive agreement has been established. The assessment of that typical load does not preclude the periodic production of electricity in excess of the customer's demand. All projects must comply with ACC net metering rules.

## PROJECT REQUIREMENTS AFTER INSTALLATION

After completing the installation of a Residential Solar Electric project or Non-Residential Solar Electric project 50 kW AC or less, the customer must continue to provide information to TEP about the system's performance.

All customer systems receiving renewable energy self-generation incentives are obligated to include a TEP-supplied production meter, which will report system production to TEP in accordance with the regular meter-reading schedule. TEP, at its option, may perform periodic inspection of the system for operation, metered production, and reporting purposes.

## THE FINE PRINT

In addition to the other requirements described in this hand book, there are two other types of program details of which system owners and installers should be aware:

1. Installer qualifications
2. System removal

These are described in further detail below.

### **Installer Qualifications**

All systems receiving incentives under the RECPP must be installed by a qualified installer. The following requirements must be submitted by the applicant as part of the reservation request. TEP will verify that the installer meets the following minimum qualifications prior to confirming a reservation request:

1. The installer must possess a valid license on file with the Arizona Registrar of Contractors ("AZROC") with a license classification appropriate for the technology being installed. Alternatively, the installer must identify use of a contractor holding an appropriate license on file with the AZROC for the technology being installed. A copy of the AZROC license must be provided as part of the reservation request.
2. The installer must possess an Arizona business license that is active and in good standing.

Installers may request that the above information be retained on file with TEP; however, under this option the installer must certify that the information on file remains current with the submission of each reservation request. Information on file must be renewed yearly.

### **System Removal**

If receiving a UFI, neither the Qualifying System nor any components thereof shall be removed from the premises (by either the applicant or future owners or occupants of the property) until December 31<sup>st</sup> of the 20<sup>th</sup> full calendar year following completion of system installation of the renewable energy system, without express agreement of TEP. If the Qualifying System is removed by any party in violation of this provision, customer shall immediately reimburse TEP all incentive amounts paid by TEP to customer or on behalf of customer to an authorized third party.

In addition, if a Qualified System is removed, TEP shall monitor that specific customer site to ensure that an additional incentive is not provided for any new distributed renewable energy resource system on that site until the Renewable Energy Credit ("REC") contracted operational life of the original system has been completed.

## EXHIBIT 3

## ASSIGNMENT OF PAYMENT

I, Thomas Patzke (please print name) residing at  
12951 N Tailwind Dr, Tucson, Arizona 85755

(please print address) hereby assign my right to receive any incentive payment from Tucson Electric Power Company (TEP) toward the cost and/or installation of my photovoltaic ☒ and/or solar hot water system ☐ under the Renewable Energy Credit Purchase Agreement between TEP and me (Agreement) to the company listed below (Company). In association with this assignment, I hereby authorize TEP to make such incentive payment on my behalf directly to Company. I acknowledge and agree that except for such assigned incentive payment, TEP is not responsible to make any payment to Company, including for any amounts that I may owe Company. I further acknowledge and agree that TEP's payment to Company of such assigned incentive fully satisfies TEP's obligation to pay any incentive under the Agreement. Finally, I acknowledge and agree that this payment represents taxable income to me for which I will be issued an IRS Form 1099-MISC, Miscellaneous Income, and that this Assignment is not valid until I have provided an accurate Taxpayer Identification Number (TIN or SSN) to TEP.

Company Name: Technicians for Sustainability

Contact Person: Erika Roush

Business Address: PO Box 1109, Tucson, AZ 85702

Customer Signature: Thomas Patzke

Date: July 21, 2011

JUL 26 2011

## EXHIBIT 4

**BRIGHT SOLUTIONS™**  
from Tucson Electric Power

August 31, 2011

Thomas A Patzke  
12951 N Tailwind Dr  
Tucson, Az 85737

Service Address: 12951 N Tailwind Dr

Dear Thomas A Patzke:

Thank you for your interest in Tucson Electric Power's Renewable Energy Credit Purchase Program (RECPP). Your Residential Solar Photovoltaic Packet was received on this day of , 2011, and your funds have been reserved pending final approval. The reservation is based on a system size of 18330 watts at \$2.00 per watt.

Proof of project advancement in the form of a jurisdictional permit must be provided and your system must be properly installed and operational within the timelines provided for in the RECPP Agreement. Your installer will be responsible for providing this documentation and regulation adherence. Final approval is contingent upon your system passing the jurisdictional code inspection and final acceptance by our technical team. Your incentive payment will be processed when we receive the Certification of Completion provided by your installer.

We look forward to working with you. More information is available online at [tep.com/green](http://tep.com/green). If you have additional questions or concerns, please contact our customer care representatives at 520-623-7711.

Sincerely,

The TEP Renewable Energy Team

# EXHIBIT 5



TEP RESIDENTIAL SOLAR PV PROGRAM  
CERTIFICATION OF COMPLETION

EXHIBIT 5

INSTRUCTIONS FOR FILLING OUT INSTALLATION CERTIFICATION

1. Completely fill in all blank spaces below
2. Installer must sign this document
3. When complete please e-mail to: sunshare@tep.com

**TEP MAIN CUSTOMER INFORMATION**

Name Tom and Karin Patzke

Project Address 12951 N Tailwind Dr

City Tucson State AZ Zip 85737 Phone Number (714)876-5949

E-Mail Address thpatzke@aol.com

**PV System Installation Information**

Module Manufacturer Phono Solar Type mono BIPV N/A

Module Nameplate DC Rating 240 Watts Quantity of Modules 78 Total System Size 18.72 kW

Module Location (i.e., Roof, Ground, etc.) ground Mounting Type (i.e., Fixed, Single, Dual) fixed

Inverter Make, Model Number, Size and Quantity 3 SMA Sunny Boy 6000

Inverter Location (Outdoor/Garage) in garage

Horizontal Tilt Angle 25 degrees Azimuth Tilt Angle 180 degrees Shading Issues none

AC Disconnect Location adjacent to utility meter Distance from utility meter adjacent to utility meter feet

Total Cost \$63,040 PV Cost \$44900 Labor Cost \$18,140

**Incentive Payment**

TEP, at their discretion, may elect to pay the incentive based on the answers provided, or may elect to conduct a system inspection and pay the incentive based on the outcome of said inspection.

The incentive paid may differ than the incentive quoted to the TEP customer for a variety of reasons, including but not limited to changes in the following: horizontal tilt, azimuth angle, shading, etc. TEP shall review the system information and base the incentive payment on the system's compliance with the TEP Renewable Energy Credit Purchase Program (RECPP), including a reduction for any off-angle and shading as provided under the RECPP. The amount of the incentive payment shall be in TEP's sole discretion.

**THE INCENTIVE PAID SHALL BE FINAL.**

**Certification**

By signing below, you certify that the system has been installed in compliance with the manufacturer's recommendations and the requirements under the RECPP as outlined below and that the answers provided herein are accurate and submitted as a final confirmation.

The system has been installed in compliance with IEEE 929 "Recommended Practice for Utility Interface of Photovoltaic (PV) Systems," TEP's Service Requirements and the latest edition of the National Electrical Code, including Article 690 and all grounding, conductor, raceway, over-current protection, disconnect and labeling requirements.

Photovoltaic components are certified by a nationally recognized testing laboratory as meeting the requirements of UL-1703.

The inverter has been certified as meeting the requirements of IEEE-1547 - Recommended Practice for Utility Interface of Photovoltaic Systems and is UL-1741 certified.

Installer (Signature) [Signature] Date December 23, 2011

Name Printed Kevin Koch Company Technicians for Sustainability

THIS IS A REQUIRED DOCUMENT FOR PAYMENT PROCESSING. IT MUST BE COMPLETED AFTER THE PV SYSTEM HAS BEEN INSTALLED. PAYMENT PROCESSING WILL NOT PROCEED UNTIL ALL RECPP REQUIREMENTS HAVE BEEN MET AND THE PV PROGRAM CERTIFICATE OF COMPLETION HAS BEEN RECEIVED BY TEP.

DEC 23 2011

## EXHIBIT 6

TEP RESIDENTIAL SOLAR PV PROGRAM  
CERTIFICATION OF COMPLETION

EXHIBIT 6

INSTRUCTIONS FOR FILLING OUT INSTALLATION CERTIFICATION

1. Completely fill in all blank spaces below
2. Installer must sign this document
3. When complete please e-mail to: sunshare@tep.com

**TEP MAIN CUSTOMER INFORMATION**

Name Tom and Karin Patzke  
Project Address 12951 N Tailwind Dr  
City Tucson State AZ Zip 85737 Phone Number (714)876-5949  
E-Mail Address thpatzke@aol.com

**PV System Installation Information**

Module Manufacturer Phono Solar Type mono BIPV N/A  
Module Nameplate DC Rating 230 Watts Quantity of Modules 80 Total System Size 18.4 kW  
Module Location (i.e., Roof, Ground, etc.) ground Mounting Type (i.e., Fixed, Single, Dual) fixed  
Inverter Make, Model Number, Size and Quantity 2 SMA Sunny Boy 6000, 1 SMA Sunny Boy 7000  
Inverter Location (Outdoor/Garage) in garage  
Horizontal Tilt Angle 25 degrees Azimuth Tilt Angle 180 degrees Shading Issues none  
AC Disconnect Location adjacent to utility meter Distance from utility meter adjacent to utility meter feet  
Total Cost \$63,040 PV Cost \$44,900 Labor Cost \$18,140

**Incentive Payment**

TEP, at their discretion, may elect to pay the incentive based on the answers provided, or may elect to conduct a system inspection and pay the incentive based on the outcome of said inspection.

The incentive paid may differ than the incentive quoted to the TEP customer for a variety of reasons, including but not limited to changes in the following: horizontal tilt, azimuth angle, shading, etc. TEP shall review the system information and base the incentive payment on the system's compliance with the TEP Renewable Energy Credit Purchase Program (RECPP), including a reduction for any off-angle and shading as provided under the RECPP. The amount of the incentive payment shall be in TEP's sole discretion.

**THE INCENTIVE PAID SHALL BE FINAL.**

**Certification**

By signing below, you certify that the system has been installed in compliance with the manufacturer's recommendations and the requirements under the RECPP as outlined below and that the answers provided herein are accurate and submitted as a final confirmation.

The system has been installed in compliance with IEEE 929 "Recommended Practice for Utility Interface of Photovoltaic (PV) Systems," TEP's Service Requirements and the latest edition of the National Electrical Code, including Article 690 and all grounding, conductor, raceway, over-current protection, disconnect and labeling requirements.

Photovoltaic components are certified by a nationally recognized testing laboratory as meeting the requirements of UL-1703.

The inverter has been certified as meeting the requirements of IEEE-1547 - Recommended Practice for Utility Interface of Photovoltaic Systems and is UL-1741 certified.

Installer (Signature) [Signature] Date December 23, 2011  
Name Printed Kevin Koch Company Technicians for Sustainability

THIS IS A REQUIRED DOCUMENT FOR PAYMENT PROCESSING. IT MUST BE COMPLETED AFTER THE PV SYSTEM HAS BEEN INSTALLED. PAYMENT PROCESSING WILL NOT PROCEED UNTIL ALL RECPP REQUIREMENTS HAVE BEEN MET AND THE PV PROGRAM CERTIFICATE OF COMPLETION HAS BEEN RECEIVED BY TEP.

## EXHIBIT 7

TEP RESIDENTIAL SOLAR PV PROGRAM  
CERTIFICATION OF COMPLETION

EXHIBIT 7

INSTRUCTIONS FOR FILLING OUT INSTALLATION CERTIFICATION

1. Completely fill in all blank spaces below
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3. When complete please e-mail to: sunshare@tep.com

**TEP MAIN CUSTOMER INFORMATION**

Name Tom and Karin Patzke

Project Address 12951 N Tailwind Dr

City Tucson State AZ Zip 85737 Phone Number (714)876-5949

E-Mail Address thpatzke@aol.com

**PV System Installation Information**

Module Manufacturer Phono Solar Type mono BIPV N/A

Module Nameplate DC Rating 230 Watts Quantity of Modules 80 Total System Size 18.4 kW

Module Location (i.e., Roof, Ground, etc.) ground Mounting Type (i.e., Fixed, Single, Dual) fixed

Inverter Make, Model Number, Size and Quantity 2 SMA Sunny Boy 6000, 1 SMA Sunny Boy 7000

Inverter Location (Outdoor/Garage) in garage

Horizontal Tilt Angle 25 degrees Azimuth Tilt Angle 180 degrees Shading Issues none

AC Disconnect Location adjacent to utility meter Distance from utility meter adjacent to utility meter feet

Total Cost \$65,088 PV Cost \$46,150 Labor Cost \$18,938

**Incentive Payment**

TEP, at their discretion, may elect to pay the incentive based on the answers provided, or may elect to conduct a system inspection and pay the incentive based on the outcome of said inspection.

The incentive paid may differ than the incentive quoted to the TEP customer for a variety of reasons, including but not limited to changes in the following: horizontal tilt, azimuth angle, shading, etc. TEP shall review the system information and base the incentive payment on the system's compliance with the TEP Renewable Energy Credit Purchase Program (RECPP), including a reduction for any off-angle and shading as provided under the RECPP. The amount of the incentive payment shall be in TEP's sole discretion.

**THE INCENTIVE PAID SHALL BE FINAL.**

**Certification**

By signing below, you certify that the system has been installed in compliance with the manufacturer's recommendations and the requirements under the RECPP as outlined below and that the answers provided herein are accurate and submitted as a final confirmation.

The system has been installed in compliance with IEEE 929 "Recommended Practice for Utility Interface of Photovoltaic (PV) Systems," TEP's Service Requirements and the latest edition of the National Electrical Code, including Article 690 and all grounding, conductor, raceway, over-current protection, disconnect and labeling requirements.

Photovoltaic components are certified by a nationally recognized testing laboratory as meeting the requirements of UL-1703.

The inverter has been certified as meeting the requirements of IEEE-1547 - Recommended Practice for Utility Interface of Photovoltaic Systems and is UL-1741 certified.

Installer (Signature) [Signature] Date December 23, 2011

Name Printed Kevin Koch Company Technicians for Sustainability

THIS IS A REQUIRED DOCUMENT FOR PAYMENT PROCESSING. IT MUST BE COMPLETED AFTER THE PV SYSTEM HAS BEEN INSTALLED. PAYMENT PROCESSING WILL NOT PROCEED UNTIL ALL RECPP REQUIREMENTS HAVE BEEN MET AND THE PV PROGRAM CERTIFICATE OF COMPLETION HAS BEEN RECEIVED BY TEP.

## EXHIBIT 8

TEP RESIDENTIAL SOLAR PV PROGRAM  
CERTIFICATION OF COMPLETION

EXHIBIT 8

INSTRUCTIONS FOR FILLING OUT INSTALLATION CERTIFICATION

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3. When complete please e-mail to: sunshare@tep.com

**TEP MAIN CUSTOMER INFORMATION**

Name Tom and Karin Patzke

Project Address 12951 N Tailwind Dr

City Tucson State AZ Zip 85737 Phone Number (714)876-5949

E-Mail Address thpatzke@aol.com

**PV System Installation Information**

Module Manufacturer Phono Solar Type mono BIPV N/A

Module Nameplate DC Rating 230 Watts Quantity of Modules 80 Total System Size 18.4 kW

Module Location (i.e., Roof, Ground, etc.) ground Mounting Type (i.e., Fixed, Single, Dual) fixed

Inverter Make, Model Number, Size and Quantity 2 SMA Sunny Boy 6000, 1 SMA Sunny Boy 7000

Inverter Location (Outdoor/Garage) in garage

Horizontal Tilt Angle 25 degrees Azimuth Tilt Angle 180 degrees Shading Issues none

AC Disconnect Location adjacent to utility meter Distance from utility meter adjacent to utility meter feet

Total Cost \$73,381 PV Cost \$61,781 Labor Cost \$11,600

**Incentive Payment**

TEP, at their discretion, may elect to pay the incentive based on the answers provided, or may elect to conduct a system inspection and pay the incentive based on the outcome of said inspection.

The incentive paid may differ than the incentive quoted to the TEP customer for a variety of reasons, including but not limited to changes in the following: horizontal tilt, azimuth angle, shading, etc. TEP shall review the system information and base the incentive payment on the system's compliance with the TEP Renewable Energy Credit Purchase Program (RECPP), including a reduction for any off-angle and shading as provided under the RECPP. The amount of the incentive payment shall be in TEP's sole discretion.  
**THE INCENTIVE PAID SHALL BE FINAL.**

**Certification**

By signing below, you certify that the system has been installed in compliance with the manufacturer's recommendations and the requirements under the RECPP as outlined below and that the answers provided herein are accurate and submitted as a final confirmation.

The system has been installed in compliance with IEEE 929 "Recommended Practice for Utility Interface of Photovoltaic (PV) Systems," TEP's Service Requirements and the latest edition of the National Electrical Code, including Article 690 and all grounding, conductor, raceway, over-current protection, disconnect and labeling requirements.

Photovoltaic components are certified by a nationally recognized testing laboratory as meeting the requirements of UL-1703.

The inverter has been certified as meeting the requirements of IEEE-1547 – Recommended Practice for Utility Interface of Photovoltaic Systems and is UL-1741 certified.

Installer (Signature) [Signature] Date December 23, 2011

Name Printed Kevin Koch Company Technicians for Sustainability

THIS IS A REQUIRED DOCUMENT FOR PAYMENT PROCESSING. IT MUST BE COMPLETED AFTER THE PV SYSTEM HAS BEEN INSTALLED. PAYMENT PROCESSING WILL NOT PROCEED UNTIL ALL RECPP REQUIREMENTS HAVE BEEN MET AND THE PV PROGRAM CERTIFICATE OF COMPLETION HAS BEEN RECEIVED BY TEP.

## EXHIBIT 9



**BRIGHT SOLUTIONS™**  
from Tucson Electric Power

April 9, 2012

Thomas A Patzke  
12951 N Tailwind Dr  
Oro Valley, Az 85737

RE: Installation Address: 12951 N Tailwind Dr  
Installer: TFS

Dear Thomas A Patzke:

Your Residential Solar Photovoltaic (PV) system meets all specifications outlined in Tucson Electric Power's (TEP) Renewable Energy Credit Purchase Program (RECPP) Up-Front Incentive (UFI) Agreement, a copy of which is enclosed for your records. All other conditions of our program also have been met, including successful completion of code inspections.

Your incentive check has been issued in accordance with instructions provided during the application process. Payment will be sent to the appropriate entity within three weeks of the date of this letter. Additionally, TEP will file and issue a 1099-MISC form for this payment, as required by the Internal Revenue Service. A copy of this form will be issued no later than January 31st of the following year.

This letter serves as permission to operate the photovoltaic generating system installed at 12951 N Tailwind Dr in parallel with TEP's electric distribution system. TEP's authorization for the operation of this facility is subject to all the terms and conditions of the RECPP UFI Agreement and Interconnection requirements contained within.

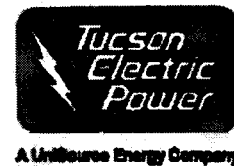
Thank you for your interest in TEP's renewable energy program. If we can be of further assistance, please visit us at [tep.com](http://tep.com) or contact one of our customer service representatives at (520) 917-3673.

Sincerely,

The TEP Renewable Resource Team

Enclosure

## EXHIBIT 10



May 23, 2012

To: Mr. Thomas Patzke  
12951 N. Tailwind Dr.  
Tucson, Arizona 85737

From: Carmine Tilghman  
Director – Renewable Resources & Programs

Subject: Incentive and REC Purchase Program (RECPP)

Dear Mr. Patzke,

In light of the unusual circumstances surrounding your residential solar installation and based on additional information Tucson Electric Power Company (TEP) has received regarding your project, we have reexamined your incentive application filed under 2011 TEP Renewable Energy Credit Purchase Program (RECPP).

As a result of this review, we have determined that Technicians for Sustainability (TFS) was not entitled to the additional \$4,256 incentive payment TEP previously paid TFS based on your claim for additional installation expenses. As such, TEP requested and TFS returned the \$4,256 TEP check. We further determined that your request for additional TEP incentives for expenses you incurred should be processed directly with you because you and not TFS made the request.

In addition, TEP has been informed that TFS did not install the racking systems or panels for your solar facility, but rather that you personally acted as the installer/general contractor for the installation of those parts of your system. The RECPP expressly requires that all systems receiving incentives be installed by a qualified, licensed installer. Because you acted as installer for components of your system, the RECPP requires you provide TEP certain additional documentation before we can determine the appropriate incentive and process your application.

Specifically, the 2011 RECPP provides the following:

***"Installer Qualifications***

*All systems receiving incentives under the RECPP must be installed by a qualified installer. The following requirements must be submitted by the applicant as part of the reservation request. TEP will verify that the installer meets the following minimum qualifications prior to confirming a reservation request:*

- 1. The installer must possess a valid license on file with the Arizona Registrar of Contractors ("AZROC") with a license classification appropriate for the technology being installed. Alternatively, the installer must identify use of a contractor holding an appropriate license on file with the AZROC for the technology being installed. A copy of the AZROC license must be provided as part of the reservation request."*

The RECPP thus requires that you provide a TEP copy of a valid AZROC contractor's license used in the installation of the portions of this project not completed by TFS, along with a completed W-9



A Unisource Energy Company

for the business entity or individual holding the license to satisfy the minimum documentation requirements for tax purposes.

In the absence of a valid AZROC contractor's license of a qualified installer, you have two options:

1. You can request a formal waiver of the contractor's license requirement. Should TEP grant the waiver, TEP will be required to seek further clarification from the IRS as to the treatment of the expenses you have claimed. Specifically, because unlicensed individuals completed parts of the installation, TEP needs clarification as to how the IRS will treat an unlicensed entity claiming labor as a qualified expense for utility incentives; or
2. You can withdraw the request for additional incentives stemming from work not performed by TFS (or any other properly licensed contractor).

The RECCP expressly provides that the up-front incentive for a particular system may not exceed 50% of the Total System Cost (as defined in the RECCP) and the customer must pay at least 15% of the Total System Cost. It has been brought to TEP's attention that you and TFS agreed to reduce the amount you paid TFS for the system by approximately \$10,000. As such, according to our calculations, the Total System Cost is no longer the \$73,381 amount in your TEP incentive application. Rather, the project cost is \$63,862, which amount is comprised of the \$32,544 TEP incentive already paid (based on the system as represented in your RECCP application), your total payments of \$14,990 to TFS, and the \$16,328 of additional expenses you now claim (assuming all of these claimed expenses qualify for incentive reimbursement under the RECCP).

The maximum incentive available under the RECCP for your \$63,862 project is \$31,931, which amount is less than the incentive TEP has already paid for your system. Accordingly, based on our understanding of the installed system, this project does not qualify for additional RECCP incentive funds and, in fact, the incentive paid may exceed that authorized under the RECCP. TEP is further reviewing to determine the appropriate incentive for your system under the RECCP given the current configuration of the system. Please note that if TEP determines the as-installed system is entitled to an incentive less than already paid (including because any of your claimed expenses do not qualify for reimbursement under the RECCP), TEP may require reimbursement of such excess amount.

If you wish to pursue this matter further, you may contact me by written notice sent to the address below to set up a personal meeting. In the absence of written notification requesting a meeting within 30 days of receipt of this certified letter, TEP will consider your request for additional incentives withdrawn.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carmine A. Tilghman'.

Carmine A. Tilghman  
Director - Renewable Resources & Programs  
88 E. Broadway Blvd  
Mailstop HQE-502  
Tucson, Arizona 85701  
Office: (520) 745-7108